Don't Drop the Torah

By Alex Kozinski

Don't take the law into your own hands. Take them to court." Those immortal words, heard every weekday on *People's Court,* have come to embody our national ethos. Americans are using the courts to solve more of their problems than ever before. It seems there is no dispute too big, too small, too serious or too trivial for a visit to the courthouse.

Let me offer a different perspective. Maybe there are times when not going to court is the wisest course. Maybe there are times when you *should* take the law into your own hands. No, I don't mean by vigilante action, but by taking personal responsibility and participating in community action.

Take the problem of hate speech and hate crimes. We hear a great clamor in the land that those who speak hateful words ought to be put in jail, and that crimes motivated by racial or ethnic hatred ought to be punished more severely than other crimes. In other words, we want to use the courts—the criminal courts in particular—to solve the problem for us. I wonder if this is the best approach.

Our focus on punishing the bearer of the despised message blinds us to some important realities about hate speech. The reason hate speech is so offensive to us—and so painful to the victims—is that it resonates a dark reality for which many more than just the speaker bear responsibility. Consider, for example, the situation where someone puts up a poster saying "Blue-eyed people are stupid." Anyone reading that sign—including those of us with blue eyes—will view it more with bemusement than anger; we will assume the sign says far more about the intelligence of the speaker than about those with blue eyes. The reason for this is that such a sign does not in any sense reflect attitudes held at large in the community.

Not so with a sign that sends a racist, sexist, homophobic or anti-Semitic message. Messages like these are devastating because they reflect attitudes held by some now and, unfortunately, many more in the not-so-distant past. A gay or a lesbian who confronts a homophobic hate message thus is not simply dealing with a kook whose views can be shrugged off. By raising the fear that the message reflects widely held attitudes, the bearer of the sign erects a daunting psychological barrier between the victims and the community in which they live.

By focusing on punishing the perpetrator, we divert attention from the responsibility each of us bears for the pain the message causes, and the things we can do to repair the damage. What I have always found most distressing, for example, about the vandalization of synagogues with anti-Semitic messages is not the physical damage, nor even the knowledge that there are some among us who would do such things. The most distressing thing is that most members of the community are content to denounce the perpetrators and then leave to the congregation the task of cleaning up the mess. This glosses over a reality far more important than the guilt of a few individuals, namely that the incident has torn the fabric of the community, leaving the victims exposed and in need of reassurance that they belong, that they are not outcasts. Our focus on the guilt of the perpetrators often keeps us from realizing that the difficult burden of repairing the social fabric and restoring the victims' sense of belonging is one that must be borne by all of us.


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A community response to instances of egregious hate speech might involve public shaming of the perpetrators or compensation to the injured citizens, perhaps by helping to repair or replace damaged property, or by offering some other symbolic gesture (whether monetary or otherwise) to demonstrate that the community accepts responsibility for undoing the harm that has been inflicted. Gestures like these can help send the message that the injured individuals are welcome members of the community, and it is the purveyors of hate who are the outcasts.

In mentioning this, I'm reminded of the war reparations my mother receives each year from Germany on account of

Alex Kozinski is a judge on the United States Ninth Circuit Court of Appeals.

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the persecution she suffered at the hands of the Nazis. It's not a lot of money, but it's not the amount that's important to her; it's what the gesture represents, the message it sends. The message conveyed is that the citizens of Germany—even those who didn't support the Nazis, even those who weren't alive then—recognize their responsibility, to her and to the other victims of the Final Solution.

Think of the bright spots in the otherwise horrific experience of the Holocaust. Was it the Nuremberg trials and executions? Was it the trial and execution of Adolph Eichmann? Was it the long hunt for Nazi war criminals? My parents were both Holocaust survivors and I grew up with concentration camp stories, yet I found the hunting down and punishment of the perpetrators—Adolph Eichmann's cry to the end that he was just carrying out orders—only a bitter satisfaction.

What I find inspiring about the Holocaust are the brave members of the community who risked their lives to save Jews, people like Oskar Schindler and Raoul Wallenberg; like the courageous people of Denmark who, led by their King, camouflaged the Jews by donning the yellow star themselves and snuck every single member of their small Jewish community out of the country to safety.

What is uplifting about these stories is the knowledge that there are among us brave people who, at the risk of their lives and the safety of their own families, nevertheless saw it as their responsibility to keep the fabric of the community intact even against the Nazi menace. They did not say, "This is not my problem because the perpetrators are those other people who have their own free will and therefore carry all the responsibility." They recognized, rather, that every decent member of the community has the power and the responsibility to stand up to the forces that would tear it asunder.

There is a tradition in Jewish law that says that if the sacred document—the Torah—ever touches the ground, everyone who is present in the synagogue, indeed everyone in the congregation, must fast for forty days, from sunrise to sunset; no special punishment is imposed on those responsible for the transgression. I asked a friend of mine who is a rabbi about the reason for this and his explanation was simple: The underlying assumption is that something like this could not happen unless the entire assembled community was at fault, for otherwise their collective merit would have prevented it. So, too, it is with racial bigotry, anti-Semitism, homophobia, and similar conduct: Such things could not take root among us unless we had all failed in our responsibility to uproot them.

The difficult burden of repairing the social fabric must be borne by all of us.

Viewing free speech and equality as pulling in opposite directions is an illusion. Prohibiting speech will not promote equality and may indeed hinder it, while impoverishing our public discourse. And it is not at all true that we must turn our back on the ideal of a just and equal society because we allow some among us to carry offensive and divisive messages. The hard-core bigots in our society will always be with us and will surely find ways of carrying their hateful message despite any prohibitions. The responsibility of the rest of us is to embrace the targets of hatred, to stand against the views of the few and our sad history of bigotry. Doing so without the expedience of prohibiting or punishing speech is, perhaps, more difficult; it no doubt requires time, effort and imagination on our part; it asks for the type of personal commitment to the concept of equality that goes far beyond just passing a law and expecting it to solve our problems for us. But it has one big advantage: It works. ❑